

Approved Tuesday, 2-7-89
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Senator Dan Thiessen, Chairman at
Chairperson

11:00 a.m. ~~pm~~ on Tuesday, January 31, 1989 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Chris Courtwright, Research Department
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Bob Williams representing KANSAS PHARMACISTS ASSOCIATION
Keith Unrein, President of KANSAS PHARMACISTS ASSOCIATION
Dick Hummel, Executive Vice President-KANSAS HEALTH CARE ASSOCIATION
Tom R. Tunnell, Executive Vice President-KANSAS FERTILIZER & CHEMICAL ASSOCIATION
Elmer McConnell-McCONNELL MACHINERY COMPANY
Wilbur Leonard representing KANSAS FARM ORGANIZATIONS
Warren Parker, Assistant Director-KANSAS FARM BUREAU
Mike Bean, Executive Secretary-KANSAS LIVESTOCK ASSOCIATION
Harlan Priddle, Secretary of Commerce
Frances Kastner, Director Governmental Affairs-KANSAS FOOD DEALERS' ASSOCIATION, INC.

Chairman Thiessen called the meeting to order and told the members they had in front of them minutes from January 13th and January 17th and would ask for a motion at the end of the meeting. He turned attention to HB2041 saying we had several conferees today and called upon Bob Williams.

HB2041: AN ACT relating to sales taxation; concerning the exemption of (prescription drugs and) farm machinery and equipment therefrom; amending K.S.A. 1988 Supp. 79-3606 and repealing the existing section.

The following conferees are proponents of HB2041.

Bob Williams said he was representing the Kansas Pharmacists Association and they were in support of HB2041, particularly the amendment which would exempt over-the-counter medication from the sales tax when purchased with a prescription order. (Attachment 1). Mr. Williams introduced Keith Unrein, President of the Kansas Pharmacists Association and said with the Chairman's permission Keith would like to make a few brief comments regarding HB2041.

Keith Unrein said he was a pharmacist in Plainville, KS and he urged the committee to consider amending HB2041 to exempt any OTC (over the counter) medications from state sales tax when prescribed by a physician as a prescription. Background information I had received concerning this issue was to exempt any product or drug from sales tax when it was prescribed by a physician. (ATTACHMENT 2)

Dick Hummel said he had passed out a handout which supports the position of Kansas Health Care Association on HB2041 so he would not appear before the committee today. (ATTACHMENT 3)

Tom R. Tunnell said the Kansas Fertilizer and Chemical Association supports (HB2041) extending the farm machinery sales tax exemption. He stated the bill has caused some confusion concerning whether it includes the combines of custom cutters and other farm equipment used in custom operations and in order to avoid further confusion and court cases and to make the statutes consistent, we suggest that HB2041 be amended by striking line 248 "such purchases is engaged in farming or ranching and that" and on line 250, strike, "As used in this subsection" and on line 251, insert "and farm and ranch work for hire." This amendment will clarify that custom cutters and others who do custom work are included. (ATTACHMENT 4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on Tuesday, January 31, 1989.

Chairman Thiessen asked if the amendment was considered in the House and Mr. Tunnell said we proposed the amendment in the House but we did not ask for it to be included in the bill at that time as we had some more research to do.

Elmer McConnell said he had a business in Lawrence and also was representing some 250 farm equipment dealers operating in Kansas, and he said farm equipment dealers operating in Kansas were directly and adversely affected when Kansas imposed state sales tax on new farm equipment sales. Our border states Missouri, Nebraska and Oklahoma have taken business away from us because they have no state sales tax on new farm equipment and Kansas farmers are going over the border to buy their new farm machinery and we need to keep these sales at home in Kansas. By maintaining the exemption you would be encouraging them to stay at home and buy from their hometown retailer. (ATTACHMENT 5)

Wilbur Leonard representing 22 Kansas Farm Organizations said we believe the continuation of this exemption not only aids the farmer but, in the long run benefits the entire state, therefore we appeal to each of you to report HB2041 favorably for passage. (ATTACHMENT 6)

After committee discussion Senator Petty asked if it would be possible to get some comparisons on exemptions and Chairman Thiessen said we would try to get some figures on that.

Warren Parker said when the legislative process was completed in 1988 that farm machinery and equipment was granted an exemption for one-year only, and we believe the state is now in a position, to proceed to take the next step and make the sales tax exemption on farm machinery and equipment permanent in this 1989 legislative session. We come before you as strong proponents of HB2041 and urge your support. (ATTACHMENT 7)

Mike Beam said the Kansas Livestock Association and other interest groups who supported the farm machinery sales tax exemption were partially successful when the temporary exemption was adopted with a one year sunset provision, and said the rationale for the sunset was: the relative size of the windfall was not as well defined as it is now, and this year we are pleased that the Governor has proposed and that many legislators have endorsed the idea of removing the sunset clause from the law, thus making permanent the sales tax exemption for new farm machinery sales and we strongly support this bill and hope the committee will vote in support of the bill. (ATTACHMENT 8)

Harlan Priddle said HB2041 is a bill that would continue to exempt farm machinery and equipment from sales tax, and this is an economic development incentive for agriculture and will serve to increase the productivity of farms and the generation of wealth for Kansas. (ATTACHMENT 9)

The following conferee is a PROPONENT for HB2041 and OPPONENT to the House Amendment.

Frances Kastner representing Kansas Food Dealers' Association, Inc. said they have no objection to the permanent sales tax exemption for new farm machinery. Our problem with the bill is the amendment made in the House Committee of the Whole and their attempt to add over the counter drugs to the ever-growing list of exemptions to the sales tax. If the legislative intent is to give residents in long care centers the same sales tax break for OTC drugs as they currently are receiving on prescription only drugs, then that language must be clear. HB2093 has the same exemption in it and we would prefer that HB2093 be worked as a separate bill. I would like to ask this committee to delete the amendment by the House Committee of the Whole dealing with non-prescription drugs. (ATTACHMENT 10)

Senator Francisco made a motion to adopt the minutes of January 13th and January 17th, seconded by Senator Montgomery. Motion carried.

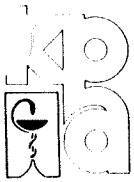
Chairman Thiessen adjourned the meeting at 12:07 p.m.

GUEST LIST

COMMITTEE: SENATE ASSESSMENT & TAXATION

DATE: Tuesday, 1-31-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Sherril Holliday	Topeka	Budget
John Cunningham	✓	Revenue
Doug Peterson	✓	Kansas Pharmacists
Barbara Williams	✓	✓
Tom Hitchcock	✓	Bd. of Pharmacy
John Cunningham	Lawrence	Ks Pharmacists Assoc
Mary Whitley	Lawrence	Ks. Pharmacists Assoc
Dick Hummel	Topeka	KS Pharm Assoc
Lee Ann Smith	Topeka	Senate Majority Leader
Tom Wilhelm	Lawrence	Gov Liaison
Wilbur Leonard	Topeka	Pharm Ks Town Assoc
Chris Wilson	Topeka	Ks Pharm Assoc
Joe Lieber	Topeka	Ks. Co-op Council
Mark Woods	Lenexa	Ks Pharm Assoc.
Don Hill	EMPORIA	Ks Pharm Assoc.
Gail Thompson	Wichita	Ks Pharm Assoc.
Ronald Eaker	Wichita	Ks Pharm Assoc
Alice Duan	Cimarron	Ks Pharm Assoc
Howard D Nellis	Wichita	Ks Pharm Assoc
William J. Jones	KANSAS CITY	Ks Pharm Assoc.
Quinn C. McNeill	Lawrence	KU Law School
Elmer M. Connell	Lawrence	M. Connell Mchry
DALE AMICK	Jefferson City, Mo.	Western Retail Supply
Howard W. Tice	Lawrence, Mo.	K. H. W. Co.
Joe Brummer	Anthony, Mo.	Ks Pharm Assoc



THE KANSAS PHARMACISTS ASSOCIATION

1308 WEST 10TH

PHONE (913) 232-0439

TOPEKA, KANSAS 66604

ROBERT R. (BOB) WILLIAMS, M.S., C.A.E.
EXECUTIVE DIRECTOR

TESTIMONY

SENATE COMMITTEE ON TAXATION

HB 2041

I am Bob Williams, Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the committee regarding House Bill 2041. We are in support of House Bill 2041, particularly the amendment which would exempt over-the-counter medication from the sales tax when purchased with a prescription order. If you will note on page 6, item (q), line 212, the words "prescription drugs" have been stricken with item (q) reading "all sales of drugs, as defined by KSA 65-1626 and amendments thereto, dispensed pursuant to a prescription order, as defined by KSA 65-1626 and amendments thereto, by a licensed practitioner;"

Back in the late 70's the Kansas Legislature exempted prescription medication from the sales tax. This was done in an effort to ease the cost of medication--particularly to the highest users of medication--the elderly. It was our understanding that the intent was to exempt all medication when purchased with a prescription order, including over-the-counter medication. That is how the pharmacists of this state have been operating up to last summer when the Department of Revenue pointed out the statute exempts only those medications which are classified as "prescription only." A prescription only drug is

defined as one which is required to state on its label that Federal law prohibits dispensing without a prescription. This, of course, precludes over-the-counter medication from the exemption.

While it is not a common practice, there are a number of reasons why a doctor would write a prescription for an over-the-counter medication. Chief among these is in a nursing home setting where every medication from aspirin to laxatives must be dispensed via prescription order.

We are fortunate today in that Keith Unrein, President of the Kansas Pharmacists Association, is in town and with the Chairman's permission Keith would like to make a few brief comments regarding HB 2041.

Thank you.

ATT 2
1-89

UNREIN **HEALTHMART** DRUG

210 W. MILL

Plainville, Kansas 67663

(913) 434-4615

Francis Unrein, Pharmacist
Keith Unrein, Pharmacist

My name is Keith Unrein, I am a pharmacist with UNREIN HEALTHMART DRUG in Plainville, Ks. I am currently serving as President of the Kansas Pharmacist Association.

As a retail pharmacist I am asking you to consider ammending House Bill 2041 to exempt any OTC MEDICATIONS from state sales tax when prescribed by a physcian as a prescription. Since the enactment of this law many years ago we have never charged sales tax on any of these items.

There are many reasons a doctor may prescribe an OTC product for one of his patients. By taxing these products we are mudding the waters. The State Welfare Department informs us we must charge tax on medicaid pæscriptions, but they will not pay the extra sales tax when our claims are submitted. Nursing home patients will now be charges sales tax because every drug prescribed requires it to have a prescription number (eg. vitamins, laxatives, aspirins, etc.). Therefore the small revenue they receive will now be smaller.

I realize with new administrations we have new interpretations of bills and laws. However, the background information I have received concernig this issue was to exempt any product or drug from sales tax when it was prescribed by a physcian.

Thank-you for your time.

Attachment 2
Senate Assessment & Tax
1-31-89



KHCA

Member of
ahca

Kansas Health Care Association

221 SOUTHWEST 33rd STREET
TOPEKA, KANSAS 66611 • 913-267-6003

DATE: January 31, 1989
TO: Senate Committee on Assessment and Taxation
SUBJ: House Bill No. 2041, Exemption of Sales Tax on Prescription Drugs

The Kansas Health Care Association (KHCA) is in support of the amendment appearing on line 214 of the bill.

This amendment will continue to allow the exemption from the payment of sales tax on over-the-counter drugs purchased under a prescription order.

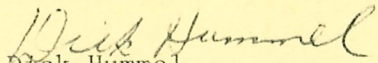
The amendment will benefit elderly and infirmed residents of adult care homes; most have limited resources. Those on public assistance are permitted to retain a "personal needs allowance" of \$30 a month to purchase certain "necities" we take for granted, such as stationary, personal clothing articles, gifts for others, beauty shop hair styling, etc.

The few pennies they'll continue to receive from the exemption of sales tax payments on drugs will make a big difference to them and their dignity.

The KHCA is a voluntary, non-profit organization representing over 200 for profit and non-profit adult care homes in Kansas rendering care daily to over 18,000 elderly and handicapped citizens.

Your support of the amendment is appreciated.

Sincerely,


Dick Hummel
Executive Vice President

DH:jn

Attachment 3
Senate Assessment & Tax
1-31-89



KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

816 S.W. Tyler St. P.O. Box 1517 A/C 913-234-0463 Topeka, Kansas 66601-1517

STATEMENT OF THE
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE
SENATOR DAN THIESEN, CHAIRMAN
REGARDING H.B. 2041
JANUARY 31, 1989

Mr. Chairman and Members of the Committee, I am Tom R. Tunnell, Executive Vice President of the Kansas Fertilizer and Chemical Association (KFCA).

Our Association supports H.B. 2041, which would extend the farm machinery sales tax exemption. We believe it has been shown that the farm machinery sales tax exemption provides a benefit to rural Kansas businesses and communities which warrants its extension.

However, the present language in the bill has caused some confusion concerning whether it includes the combines of custom cutters and other farm equipment used in custom operations. In 1985, the Legislature clarified the definition of farm machinery in the property tax statutes (K.S.A. 79-201j) by defining farm machinery on the basis of use, rather than ownership. This statutory language has been tested and held by the Board of Tax Appeals. In fact, as the attached memo from Harley Duncan, former Secretary of Revenue, states "the Supreme Court of Kansas has consistently held that where public property is not involved, a tax exemption must be based on the use of the property and not on the basis of ownership alone."

In order to avoid further confusion and court cases and to make the statutes consistent, we suggest that H.B. 2041 be amended by:

On line 248, strike, "such purchaser is engaged in farming or ranching and that"

On line 250, strike, "As used in this subsection"

On line 251, add, "and farm and ranch work for hire."

Those two sentences would then read (starting on line 245), "Each purchaser of farm machinery or equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery or equipment purchased will be used only in farming or ranching. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire."

This amendment will clarify that custom cutters and others who do custom work are included. The exemption will be as the Supreme Court has ruled it must be, based upon the piece of equipment as opposed to its ownership.

This language is consistent with the property tax statute.

Thank you for the opportunity to comment of H.B. 2041. I would be glad to respond to any questions you may have.

FILE - FARM MACHINERY
TAX DEDUCTION




KANSAS DEPARTMENT OF REVENUE
Division of Property Valuation
Robert B. Docking State Office Building
Topeka, Kansas 66612-1585

COPY
To Jack Howard,
Per. H. K. W.

M E M O R A N D U M

TO: All County Appraisers

FROM: Harley T. Duncan, Secretary of Revenue
Acting Director of Property Valuation 

DATE: April 16, 1987

SUBJECT: Farm Machinery and Equipment Exemption;
K.S.A. 1986 Supp. 79-201j; K.S.A. 1986 Supp.
79-213(n).

The general rule in the State of Kansas is that any property owner requesting an exemption from the payment of ad valorem property taxes assessed or to be assessed against his or her property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser. K.S.A. 1986 Supp. 79-213(a).

An exception to the general rule is accorded in the case of farm machinery and equipment exempted from ad valorem taxation by K.S.A. 1986 Supp. 79-201j. A property owner claiming the farm machinery and equipment tax exemption shall not be required to file an initial request for such exemption from the board of tax appeals.

"Farm machinery and equipment" is defined as that personal property actually and regularly used exclusively in any farming or ranching operation. The term "farming or ranching operation" shall include the performing of farm or ranch work for hire. The term "farm machinery and equipment" shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer designed and used primarily as a farm vehicle. K.S.A. 1986 Supp. 79-201j.

"Farm machinery and equipment" includes anhydrous applicators, nurse tanks and other such machinery and equipment actually and regularly used exclusively in a farming or ranching operation. In short, commercially owned fertilizer equipment actually and regularly used exclusively in a farming or ranching operation is exempt from ad valorem property taxation and the owners of such property are not required to list such property for taxation, nor are they

required to file an initial request for tax exemption from the board of tax appeals. Furthermore, such exempt personal property shall not be included on the exempt personal property roll. K.S.A. 1986 Supp. 79-1467a.

★ The farm machinery and equipment tax exemption is based on the exclusive use of the property and not on the basis of ownership. The Supreme Court of Kansas has consistently held that where public property is not involved, a tax exemption must be based on the use of the property and not on the basis of ownership alone. The reason for the rule is that a classification for tax purposes based solely on ownership unlawfully discriminates against one citizen in favor of another and therefore is a denial of the equality and uniformity provisions of Article 11, Section 1 of the Constitution of the State of Kansas. Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 542 P.2d 278 (1975); Lutheran Home, Inc. v. Board of County Commissioners, 211 Kan. 270, 505 P.2d 1118 (1973).

In 1985 the Kansas Legislature amended and expanded K.S.A. 79-201j to provide that "(t)he term 'farming or ranching operation' shall include the performing of farm or ranch work for hire." The amendment applies to all taxable years commencing after December 31, 1984. Consequently, commercially owned fertilizer equipment actually and regularly used exclusively in a farming or ranching operation has been exempt from ad valorem property taxation since at least December 31, 1984 and such exemption is not lost even if the commercial owner is paid for applying the fertilizer or rents the commercial fertilizer equipment to the farmer or rancher to be used exclusively in a farming or ranching operation.

Of course, when the appraiser has information that any farm machinery and equipment is not being used exclusively in a farming or ranching operation, such property shall be listed for taxation and the property owner advised to request a tax exemption from the board of tax appeals.

Nothing in this memorandum shall be construed to mean that leased farm machinery and equipment shall be exempted from ad valorem property taxation without an exemption order from the board of tax appeals. All leased farm machinery and equipment shall be listed for taxation and the owner thereof requested to seek an exemption on forms approved by the board of tax appeals and provided by the county appraiser.

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property;
(t) all sales of tangible personal property or services purchased directly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 *et seq.*, and amendments thereto, which property or services are used in the operation or maintenance of the district;

(u) ~~(t)~~ all sales of ~~used~~ farm machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term "farm machinery and equipment" shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto. ~~For the purposes of this subsection "sales of used farm machinery and equipment" shall mean and include sales other than the original retail sale of such machinery and equipment.~~ Each purchaser of farm machinery or equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that ~~such purchaser is engaged in farming or ranching and that the farm machinery or equipment purchased will be used only in farming or ranching. As used in this subsection,~~ Farming or ranching shall include the operation of a feedlot/

and farm and ranch work for hire.

~~(2) on and after July 1, 1988, and on or before June 30, 1989, all sales of farm machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection, "farm machinery and equipment" shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto. Each purchase of farm machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that such purchaser is engaged in farming or ranching and that the farm machinery and equipment purchased will be used only in farming or ranching. For the purposes of this subsection, "farming or ranching" shall include the operation of a feedlot;~~

(v) all leases or rentals of tangible personal property used as a

History: L. 1975, ch. 495, § 7; L. 1979, ch. 308, § 1; L. 1984, ch. 350, § 1; L. 1987, ch. 369, § 1; July 1.

79-201g.**Attorney General's Opinions:**

Waters and watercourses; collection, storage and impounding of waters; construction and maintenance of dams; donation of easements; tax exemption. 85-43.

79-201i.**Law Review and Bar Journal References:**

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Virginia Ratzlaff, 33 K.L.R. 71, 73 (1984).

Attorney General's Opinions:

Property exempt from taxation; farm machinery and equipment held as inventory. 86-132.

CASE ANNOTATIONS

1. Property owned by non-tax-exempt entity leased or providing service for profit to tax-exempt entity taxable. *Farmers Co-op v. Kansas Bd. of Tax Appeals*, 236 K. 632, 640, 694 P.2d 462 (1985).

2. Machinery and equipment used in commercial feedlot not within exemption from taxation as farming or ranching. *T-Bone Feeders, Inc. v. Martin*, 236 K. 641, 649, 693 P.2d 1187 (1985).

79-201j. Property exempt from taxation; farm machinery and equipment. The following described property, to the extent specified by this section, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

All farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used exclusively in any farming or ranching operation. The term "farming or ranching operation" shall include the performing of farm or ranch work for hire. The term "farm machinery and equipment" shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as the terms are defined by K.S.A. 8-126 and amendments thereto.

The provisions of this section shall apply to all taxable years commencing after December 31, 1984.

History: L. 1982, ch. 390, § 3; L. 1985, ch. 311, § 4; July 1.

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Virginia Ratzlaff, 33 K.L.R. 71, 72 (1984).

Attorney General's Opinions:

Property exempt from taxation; farm machinery and equipment held as inventory. 86-132.

CASE ANNOTATIONS

1. Property owned by non-tax-exempt entity leased or providing service for profit to tax-exempt entity taxable. *Farmers Co-op v. Kansas Bd. of Tax Appeals*, 236 K. 632, 640, 694 P.2d 462 (1985).

2. Machinery and equipment used in commercial feedlot not within exemption from taxation as farming or ranching. *T-Bone Feeders, Inc. v. Martin*, 236 K. 641, 649, 693 P.2d 1187 (1985).

3. Cited; nonbusiness use of rental airplane from airplane rental company making property ineligible for tax exemption (79-201k) examined. *Kenneth Godfrey Aviation, Inc. v. Smith*, 12 K.A.2d 434, 746 P.2d 1068 (1987).

79-201k. Property exempt from taxation; purpose; business aircraft. (a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft and the use of aircraft in business and industry is vital to the continued economic growth of the state.

(b) The following described property, to the extent herein specified, is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. For all taxable years commencing after December 31, 1982, all aircraft actually and regularly used exclusively to earn income for the owner in the conduct of the owner's business or industry.

History: L. 1982, ch. 390, § 4; L. 1988, ch. 374, § 3; July 1.

CASE ANNOTATIONS

1. Flying club with full-time staff using aircraft exclusively for rental to members held to be business. In re Tax Appeal of Cessna Employees' Flying Club, 11 K.A.2d 378, 381, 721 P.2d 298 (1986).

2. Nonbusiness use of rental airplane from airplane rental company makes airplane ineligible for tax exemption. *Kenneth Godfrey Aviation, Inc. v. Smith*, 12 K.A.2d 434, 439, 746 P.2d 1068 (1987).

79-201m. Property; taxation; merchants' inventory. To the extent specified by this section, property, to the extent specified by this section, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas.

As used in this section:

(a) "Merchant" means a person, company or corporation, subject to the provisions of this section, who holds, owns or has an interest in personal property which has been purchased, modified or changed and without any intervening person, company or corporation, engaged in the business of refining or combining or converting tangible personal property from one form to another including:

(b) "manufacturer" means every person, company or corporation, engaged in the business of manufacturing, producing or converting tangible personal property from one form to another including:

(c) "inventory" means items of tangible personal property held for sale in the ordinary course of business (finished goods); (2) items of tangible personal property which are to be consumed or used indirectly in the production of goods (raw materials and supplies); (3) items of tangible personal property which are held for sale in the ordinary course of business and are classified as inventory under the provisions of the federal income tax laws; (4) items of tangible personal property which are retired from regular use or are standby or as surplus; (5) items of tangible personal property which are classified as inventory under the provisions of the federal income tax laws.

The provisions of this section shall apply to all taxable years commencing after December 31, 1988.

History: L. 1988, ch. 374, § 3; July 1, 1989.

79-201n. Property; taxation; grain. The following described property, to the extent specified by this section, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

All grain. As used in this section, "grain" includes soybeans, cowpeas, barley, kafir, rye, flax and sorghum, but shall not include any grain which has been milled or processed.

The provisions of this section shall apply to all taxable years commencing after December 31, 1988.

History: L. 1988, ch. 374, § 3; July 1, 1989.

TO: Senate Assessment and Taxation Committee
FROM: Elmer McConnell, McConnell Machinery Co., Lawrence, Kansas
RE: Permanent State Sales Tax Exemption on New Farm Equipment
DATE: Jan. 31, 1989

Mr. Chairman, members of the committee. I'm Elmer McConnell of McConnell Machinery Co. in Lawrence, Kansas. I'm here today as a representative of the some 250 farm equipment dealers operating in Kansas. I am also representing the Western Retail Implement and Hardware Association.

First of all, we appreciate the opportunity to testify and for the committee to consider this most important issue.

I'm typical of the farm equipment dealer in Kansas today. Our business employes 13 persons and serves a large trade area. Our business was directly and adversely affected when Kansas imposed state sales tax on new farm equipment sales.

The permanent exemption of the state sales tax on new farm equipment sales is important to our industry and to the survival of many of my colleagues who are in business today, especially those in close proximity to the borders of states with a state sales tax exemption. Making permanent the state sales tax on new farm equipment sales can help our Kansas dealers remain competitive with other dealerships in adjoining states that either have no sales tax on new farm equipment sales or a reduced rate compared to our four per cent figure.

Missouri and Oklahoma on our border have no state sales tax on new

farm equipment sales. I am in direct competition with dealerships in Western Missouri and they have taken business away from my business solely because of the sales tax exemption advantage in Missouri.

Colorado on our western border has a reduced rate compared to our sales tax figure---three per cent. Only Nebraska, among our border states, has a four per cent state sales tax on new farm equipment.

Other states in close proximity to Kansas--Arkansas, Iowa, Texas, and Illinois--have no state sales tax on new farm equipment.

In talking with other dealers in close proximity to states with no state sales tax on new farm equipment, they indicate a loss of business as Kansas farmers travel to other states to purchase expensive equipment. And you can't really blame the farmer. He can save literally thousands of dollars on a big ticket item by travelling a few hundred miles. We need to keep these sales at home in Kansas.

Needless to say, our industry has suffered the past few years. The depression in our agriculture economy and other factors are involved in helping to shove many farm equipment dealers out the door and out of business in Kansas. About one-third of all farm equipment dealers in Kansas have gone out of business since 1981. Sales of new farm equipment are off 70 per cent since 1981. Dealers that are surviving are doing so by tightening their belts yet another notch. The situation may be improving though and making permanent the state sales tax exemption can only help our dealers survive.

By maintaining the exemption you would be not only helping our farm equipment dealers, but you would be helping Kansas farmers as well. You would be helping them save on equipment costs. You would be encouraging them to stay at home and buy from their hometown retailer.

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You would be helping to keep the money from the purchase of new farm equipment in our local economies, which in turn would help other businesses, help keep jobs in our communities and bring in added local and state revenue.

By maintaining the exemption you would be helping to keep our dealers competitive with their counterparts in adjoining states.

Again, we appreciate your consideration of our views on this issue and we thank you for the opportunity to appear here today. I'd be happy to answer any questions.

Committee of . . .

ATT 6

Kansas Farm Organizations

Wilbur G. Leonard
Legislative Agent
109 West 9th Street
Suite 304
Topeka, Kansas 66612
(913) 234-9016

TESTIMONY IN SUPPORT OF HB NO. 2041

BEFORE THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

January 31, 1989

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, appearing for the Committee of Kansas Farm Organizations which is comprised of 22 organizations representing various segments of the agricultural community. A roster of our membership is attached to this brief statement.

We appreciate and we welcome this opportunity to appear before you to outline our reasons for supporting House Bill 2041.

Presently, both our farmers and ranchers and Kansas industrialists are exempt from the payment of the Kansas sales tax on the purchase of machinery and equipment used in the conduct of our respective business operations. Prospectively, there could be a difference in the sales tax treatment of these two groups, since, without the passage of this measure, the sales tax exemption on the purchase of farm machinery will expire June 30, 1989 while the exemption will continue for the purchase of industrial equipment. It seems only fair and logical that those who create the food and fiber and who constitute the largest economic group in this state should receive the same tax treatment as those who are engaged in industrial production. To do otherwise puts the Kansas farmers and ranchers at a disadvantage with respect to their counterparts in those neighboring states where there is no sales tax on farm machinery.

It also creates an unfair situation for Kansas implement dealers, particularly those along our borders. A Kansas dealer, in competition with an out-of-state dealer, can and will lose sales of implements and equipment over a 4% differential in price. The more dollars we can keep turning over within our state the better our general economy will be.

We sincerely believe the continuation of this exemption not only aids the farmer but, in the long run, benefits the entire state. We, therefore, appeal to each of you to report House Bill 2041 favorably for passage.

Thank you for your consideration.

MEMBERS OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

ASSOCIATED MILK PRODUCERS

KANSAS AGRI-WOMEN

KANSAS ASSOCIATION OF SOIL CONSERVATION DISTRICTS

KANSAS ASSOCIATION OF WHEAT GROWERS

KANSAS COOPERATIVE COUNCIL

KANSAS CORN GROWERS ASSOCIATION

KANSAS ELECTRIC COOPERATIVES

KANSAS ETHANOL ASSOCIATION

KANSAS FARM BUREAU

KANSAS FERTILIZER & CHEMICAL INSTITUTE, INC.

KANSAS GRAIN & FEED DEALERS ASSOCIATION

KANSAS LIVESTOCK ASSOCIATION

KANSAS MEAT PROCESSORS ASSOCIATION

KANSAS PORK PRODUCERS COUNCIL

KANSAS RURAL WATER ASSOCIATION

KANSAS SEED DEALERS ASSOCIATION

KANSAS SOYBEAN ASSOCIATION

KANSAS STATE GRANGE

MID-AMERICA DAIRYMEN

KANSAS VETERINARY MEDICAL ASSOCIATION

KANSAS WATER WELL ASSOCIATION

WESTERN RETAIL IMPLEMENT AND HARDWARE ASSOCIATION



PUBLIC POLICY STATEMENT

Senate Committee on Assessment & Taxation

**RE: H.B. 2041 - Relating to sales tax exemption for
farm machinery and equipment**

January 31, 1989
Topeka, Kansas

Presented by:
Warren A. Parker, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

My name is Warren A. Parker. I am the Assistant Director of Public Affairs for Kansas Farm Bureau. We sincerely appreciate the opportunity to address your Committee today. We come before you as **strong proponents** of H.B. 2041.

When the legislative process had been completed in 1988, business machinery and equipment was granted a permanent exemption from the sales tax. Farm machinery and equipment was granted an exemption for one-year only.

Governor Hayden, in his State of the State Message on January 9, 1989, told you that together the executive and legislative branches accomplished sweeping changes in the tax codes in Kansas, the greatest change in 55 years concerning the state income tax. The Governor highlighted these points in his address:

- * Income tax rates were slashed;
- * Inequities were addressed through a rebate to our senior citizens;

*** Depressed family farms were given a boost with a sales tax exemption on new farm machinery;**

* Our ability to attract jobs to the state was enhanced through a sales tax exemption on new business machinery and equipment; and

* 105,000 low-income Kansans were removed from the state income tax roles.

Mr. Chairman, and members of the Committee the exemption for one year made a great difference. We believe the state is now in a position, a fiscal condition it did not enjoy last year, to proceed to take the next step and make the sales tax exemption on farm machinery and equipment permanent.

In his State of the State Message, the Governor, on page 29 of the Message, addressed this topic specifically. He said: "In 1988, I signed legislation enacting a sales tax exemption for new farm machinery purchased in Kansas. This tax exemption was granted for one-year only.

"My budget recommendations call for making this tax exemption permanent. This recommendation provides for on-going support to our state's struggling agricultural sector."

Our policy position on this issue was refined at the recent (December 4-6, 1988 KFB Annual Meeting) to reflect and express appreciation for the one-year exemption but to encourage you to take that next step now, in 1989, to make the exemption permanent. Our policy says this:

"In 1988 the Kansas Legislature determined it was in the public interest to promote economic development by granting sales tax exemptions for manufacturing machinery and equipment. In the same legislation, agriculture - the number one industry in the state - was granted only a one-year exemption of sales tax for new farm machinery. The one-year exemption has demonstrated a positive economic impact on rural Kansas by increased farm machinery and equipment sales by rural dealers.

We strongly urge that the sales tax exemption for new farm machinery and equipment be made permanent."

In conclusion, Mr. Chairman, I want to point out that we have attached to our testimony today, information which we have collected from the other states concerning the sales tax and property tax exemption and treatment of various kinds of property. You will notice in the left-hand column of the two-page attachment the list of states who provide either an exemption for farm machinery ... 32 states counting Kansas with its now one-year exemption ... while other states have a reduced rate or limited tax on machinery and equipment. The second attachment relates to industrial revenue bonds. We give that to you for information only, but we want to stress that we are and have been strong supporters of economic development, of initiatives to keep Kansas competitive in the tax field.

Thank you for the opportunity you have given us to make this statement. We would be pleased to respond to any questions.

ST SALES TAX AND PROPERTY TAX SURVEY

State	Sales tax required on farm machinery and equipment	Farm Machinery Rate	State Sales Tax	Property tax required on farm machinery and equipment
Alabama	Yes - reduced rate	1.5%	4.0%	No
Arizona	Yes	5.0%	5.0%	Yes - Farm mach & equip assessed at 16% - most other taxable property assessed at 25%
Arkansas	No	----	4.0%	Yes - assessed at 20% of value
California	Yes	4.75%	4.75%	Yes - survey of implement dealers in each county to determine appraisal in each county
Colorado	Yes	3.0%	3.0%	No
Connecticut	No - reduced rate on repair & replacement parts	----	7.5%	No - exempt up to \$100,000
Delaware	No	----	----	Yes
Florida	Yes - reduced rate	5.0%	6.0%	Yes
Georgia	No	----	3.0%	Yes
Idaho	No	----	5.0%	Yes
Illinois	No - some counties levy a local 1% sales tax	----	5.0%	No
Local sales tax to be eliminated 1-1-90 and state tax increased to 6.25 on 1-1-90				
Indiana	No	----	5.0%	Yes
Iowa	No	----	4.0%	No
Kansas	No - new farm mach & equip exempt for 1 yr (7-1-88 to 6-30-89). Used farm mach, equipment and repairs are exempt	----	4.0%	No
Kentucky	No	----	5.0%	Yes - tax rate is .001 per \$100.00 value
Louisiana	Yes - limited - sales tax only on amount above \$50,000 per item	4.0%	4.0%	No - also exempt all farm structures except principal residence

Maine	No - if in excess of \$1,000	----	5.0%	Yes - reduced assessment
Maryland	No	----	5.0%	No
Massachusetts	No	----	5.0%	Yes
Michigan	No - effective 1935	4.0%	4.0%	No - effective 1964
Minnesota	Yes - reduced rate	2.0%	6.0%	No
Mississippi	Yes - reduced rate	3.0%	6.0%	No
Missouri	No	----	4.225%	Yes - agricultural land assessed at 12%; residential property 19%; commercial 32%. Beginning 1-1-89 farm mach assessed at 12%
Montana	No	----	----	Yes - farm machinery is appraised at 80% of value. In 1989, Montana Dept. of Revenue will introduce legislation to exempt all personal prop
Nebraska	Yes	4.0%	4.0%	No
Nevada	Yes	5.75%	5.75%	Yes (Dealers farm mach is exempt)
New Hampshire	No	----	----	No
New Jersey	No	----	6.0%	No
New Mexico	Yes (50% of receipts from sales of unregistered agric mach and equipment)	4.75%	4.75%	Yes (Some counties use an estimated market value, some counties use straight-line depreciation off of purchase price)
New York	No	----	4.0%	No Also: Exempt farm bldgs. from property tax
North Carolina	Yes - reduced rate; 1% limit to \$80.00	1.0%	3.0%	Yes (Each co. appraises fm mach & equip. Farmer may apply for an income tax credit against his state income taxes for ad valorem taxes paid to the county on fm mach & equip & repair parts)
North Dakota	Yes - reduced rate	3.0%	5.5%	No
Ohio	No	----	5.0%	No

Oklahoma	No	----	4.0%	Yes
Oregon	No	----	----	No
Pennsylvania	No	----	6.0%	No
Rhode Island	No (If farmer has \$2,500 gross sales)	----	6.0%	No (Also exempt motor vehicles with farm registration)
South Carolina	No	----	5.0%	No
South Dakota	Yes - reduced rate; replacement parts and used equip are exempt	3.0%	4.0%	Yes
Tennessee	No	----	5.5%	No
Texas	No	----	6.0%	No
Utah	No	----	5 3/32%	No
Vermont	No	----	4.0%	No
Virginia	No	----	3.5%	No - property tax on all farm mach & livestock is local option. Local governing body may exempt in whole or in part or provide a different rate of taxation.
Washington	Yes	6.5%	6.5%	Yes
West Virginia	No	----	6.0%	Yes - reduced rate
Wisconsin	No	----	5.0%	No
Wyoming	Yes	3.0%	3.0%	Yes

32 states - no sales tax
9 states - reduced rate or limits

27 states - no property tax
10 states - taxed differently or reduced rate

20 states - exempting both

37 states exempt livestock from Property Tax

Alabama	Illinois	Maryland	Nevada
California	Iowa	Michigan	New Hampshire
Colorado	Kansas (1-1-89)	Minnesota	New Jersey
Connecticut	Kentucky	Mississippi	New York
Florida	Louisiana	Montana	North Dakota
Idaho	Maine	Nebraska	Ohio
Oregon	South Carolina	Texas	Virginia
Pennsylvania	South Dakota	Utah	Washington
Rhode Island	Tennessee	Vermont	Wisconsin
			Wyoming

INDUSTRIAL REVENUE BONDS

*Issues; 1961-1987

Number of issues - 2,152 Amount - \$7,232,230,718

*Issues; 1978-1987

Number of issues - 1,339 Amount - \$6,158,508,168

* Source: Kansas Department of Commerce

PROPERTY TAX EXEMPTION

KSA 79-201a authorizes the exemption from property tax on all property constructed or purchased with proceeds of IRB's

\$6,158,508,168
 x 10%
615,850,816.80
 x .12366
\$76,156,112.00

amount IRB's issued 1978-1987
assess at 10% -- **not the required 30%**
assessed value
average 1987 state mill levy
property tax due at a 10% assessment and
1987 state average mill tax levy

\$3,513,301.76* -- In lieu-of-taxes paid in 1987 on IRB properties
*Source: Statistical Report of P.V.D.

SALES TAX EXEMPTION

The Attorney General on about 7-1-80 determined that sales tax need not be collected on building materials and personal property purchased with IRB money.

Let us assume that 60% of the IRB issue is for building material and personal property. Labor on new construction is not subject to sales tax.

We have used 1/2 of the 1980 IRB issue but in 1986 we used 3% sales tax for the entire year.

IRB Issues 1980-1987

	No. of issues	Amount	(1/2 year)				Sales Tax exemption
1980	139	\$581,493,800	\$290,746,900	x 60%	=	\$174,448,140	x 3% = \$5,233,444
1981	183	454,825,600		x 60%	=	272,895,360	x 3% = 8,186,861
1982	181	284,591,000		x 60%	=	170,754,600	x 3% = 5,122,638
1983	169	734,305,874		x 60%	=	440,583,520	x 3% = 13,217,505
1984	153	751,929,094		x 60%	=	451,157,450	x 3% = 13,534,723
1985	149	1,091,957,644		x 60%	=	655,174,560	x 3% = 19,655,236
1986	80	785,170,000		x 60%	=	471,102,000	x 3% = 14,133,060
1987	52	961,465,356		x 60%	=	576,879,210	x 4% = 23,075,168
		<u>\$5,645,738,368</u>					<u>\$102,158,635</u>

No one seems to have the figures for the sales tax exemption for property purchased in enterprise zones.



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STATEMENT
OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE COMMITTEE OF

SENATE ASSESSMENT & TAXATION

WITH RESPECT TO

HOUSE BILL 2041

(Permanent Sales Tax Exemption on Farm Machinery)

Presented by

MIKE BEAM

Executive Secretary, Cow-Calf/Stocker Division

JANUARY 31, 1989

Good morning Mr. Chairman and members of the committee. My name is Mike Beam and I'm testifying on behalf of the 10,000 members of the Kansas Livestock Association. We appear before you today in support of House Bill 2041.

KLA lobbied in favor of the sales tax exemption for all new farm machinery purchases last year as the so-called "windfall" issue was being debated. We felt that if it made sense to give a sales tax exemption for new manufacturing equipment as an economic development incentive that it also made sense to exempt the equipment used in the state's largest industry ... agriculture.

We and the other individual legislators and interest groups who supported the farm machinery sales tax exemption were partially successful when the temporary exemption was adopted with a one year sunset provision. The rationale for the sunset was:

1. The relative size of the windfall was not as well defined as it is now.
2. Political compromise.

This year, we are pleased that the Governor has proposed and that many legislators have endorsed the idea of removing the sunset clause from the law, thus, making permanent the sales tax exemption for new farm machinery sales. We strongly support this bill and hope the committee will vote in support of the bill.

Testimony

Presented to:

The Senate Assessment and Taxation Committee

on House Bill 2041

by

Harland E. Priddle
Secretary of Commerce

January 31, 1989

Attachment 9
Senate Assessment & Tax
1-31-89

Mr. Chairman and members of the committee. I am happy to be here this morning and speak on behalf of a bill that would continue to exempt farm machinery and equipment from sales tax. In economic development we try to stimulate enterprises that bring outside money into Kansas and agriculture does just that by creating wealth for Kansas. In the 1987 crop year, agriculture in Kansas was a \$5.7 billion dollar industry. As a further comparison, at the present time, there are 65,015 business establishments in Kansas. There are 72,000 farms. Agriculture is still a major industry in all parts of the state, even in some areas that are thought of as urban. In 1987, 55% of Johnson County's acreage was designated as farmland and its revenues were \$20.8 million dollars. This bill to continue the sales tax exemption for farm machinery is an economic development incentive for agriculture.

Recently attention has centered on the many problems of the rural areas. The Governor's Task Force on Rural Communities addressed a wide spectrum of issues including coordination of economic development services, health care availability, and public and private sector capital availability. Many rural communities rely on the income from farmers' to generate demand for goods and services within their communities. When the farmer receives lower prices for his commodities, or if his operating costs increase, less money can be spent on goods and services in the surrounding communities. Agri-businesses and financial institutions are also affected, creating a "multiplier effect" on the viability of rural communities.

Within state policy little can be done to affect commodities prices. However, exempting farm equipment from sales taxation is one small step that could be taken to help keep operating costs down.

This sales tax exemption for farm machinery and equipment will serve to increase the productivity of farms and the generation of wealth for Kansas.



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

January 31, 1989

SENATE ASSESSMENT AND TAXATION COMMITTEE

HB 2041 O.T.C. Drugs Amendment

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FRANCES KASTNER

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes manufacturers, wholesalers, distributors, and retailers of food products.

The first thing I want to do is make it clear that we have no objection to the permanent sales tax exemption for new farm machinery.

Our problem began with the amendment made in the House Committee of the Whole last week in their attempt to ADD (OTC) OVER THE COUNTER drugs to the ever-growing list of exemptions to the sales tax. Even the title of the bill is confusing. Adding the words in brackets and bold print ["prescription only and"] gives the impression that another category WILL BE ADDED when in fact on page 6 of HB 2041, line 214 the phrase "prescription only" is deleted.

We understand that proponents wanted to exempt from the sales tax the sale of OTC drugs, such as aspirin, taken over a long period of time by patients in health care centers or those on public assistance. IF that is the intent, then the language MUST BE MORE RESTRICTIVE, AND SPELL OUT IN DETAIL THOSE WHO WOULD NOT BE PAYING SALES TAX ON OTC.

IF proponents do not want OTC drug sales tax exemption restricted to that group of people, then we believe the fiscal note would be higher than the \$500,000 we heard discussed.

For background, I should tell you that more than a dozen years ago, retailers of OTC drugs and bona-fide pharmacy operations disagreed on whether non-prescription medicines, often called over-the counter drugs, should be exempt from the sales tax base or limited to "prescription only" drugs. Numerous attempts have been made to change the original legislative intent to exempt just the sale of "prescription only drugs". We see this amendment as another attempt to legislate exclusivity to the pharmacists for the sale of OTC drugs.

As you know most grocery stores, as well as many restaurants, gasoline stations and other retailers carry over-the-counter (O.T.C.) drugs such as cough drops, cough syrups, aspirins, calcium, antacids, vitamins and a host of other compounds that are available without any prescription by a medical doctor. All of these items are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with state and federal food, drug and cosmetic acts.

IF the amendment adopted on the floor of the House becomes law there would no longer be a definition for "Prescription only drugs" in the Pharmacy Act, as we interpret the amendment. So, the law would say "all drugs as defined by KSA 65-1626 and amendments thereto DISPENSED PURSUANT TO A PRESCRIPTION ORDER, as defined by KSA 65-1626 and amendments thereto, BY A LICENSED PRACTITIONER."

What happens to the numerous references to the term "prescription only" drugs throughout the Pharmacy Act? One quick example is found in section (m) (1) and (2) (C) defining "Institutional drug room" where prescription only drugs are dispensed and located.

Another definition in the Pharmacy Act under KSA 65-1626 (x) "prescription order" means (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner in the authorized course of his or her professional practice or (2) an order transmitted to the pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner."

That language will effectively preclude any "retailer" as defined in that act from selling OTC drugs that are prescribed by a licensed practitioner since ONLY A PHARMACIST CAN FILL A PRESCRIPTION ORDER.

We do not believe it is wise to just pick up a definition from a completely separate act delete the words "prescription only" from the Pharmacy Act and try to exempt over-the-counter NON-PRESCRIPTION DRUGS from the sales tax base.

If the legislative intent is to give residents in long care centers the same sales tax break for OTC drugs as they currently are receiving on prescription only drugs, then that language must be clear. HB 2093, was introduced by Repr. Crowell on January 24 and has the same exemption in it. We would prefer that HB 2093 be worked as a separate bill, with appropriate testimony from all those who would be involved, rather than cluttering up a bill intended to make permanent a sales tax exemption on new farm machinery.

I thank you for the opportunity of appearing before you today on this topic and ask you to delete the amendment by the House Committee of the Whole dealing with non-prescription drugs. I would be happy to answer any questions you might have.